



**Response to**  
**Ministry of Justice Consultation on reforms**  
**proposed in the Public Bodies Bill**  
***Reforming the public bodies of the Ministry of***  
***Justice***

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## **Introduction**

1. JUSTICE is an independent all-party legal and human rights organisation, which aims to improve British justice through law reform and policy work, publications and training. Its mission is to advance access to justice, human rights and the rule of law. It is the UK section of the International Commission of Jurists.
2. JUSTICE has briefed on the Public Bodies Bill during its passage through Parliament and suggested relevant amendments. Our briefings are available from the JUSTICE website. In them we express our serious concerns at the Bill's use of secondary legislation (in the form of 'Henry VIII clauses') to allow the abolition and amendment of public bodies established by primary legislation. We therefore oppose the Bill in its entirety. Our concerns are even stronger in relation to those public bodies in the Bill with functions relating to the administration of justice and/or the promotion and protection of human rights. While some such bodies have been removed from the Bill following widespread opposition, others – including the Equality and Human Rights Commission, amongst others – remain.
3. However, in this response we will address only our concerns regarding the maintenance, abolition or reform of the bodies in question, leaving aside our views of the mechanism by which this is to take place. We comment only in relation to bodies whose abolition or amendment gives rise to serious concerns. Failure to comment on a proposal should not be taken for approval. None of the proposals in the consultation have any significant direct impact on JUSTICE.

## **Summary**

4. **We do not oppose the abolition of the Administrative Justice and Tribunals Council since it is logical following the incorporation of the tribunals into HM Courts and Tribunals Service.**
  - **We oppose the abolition of HMICA and believe it is contrary to the consultation criteria to have consulted upon its abolition now when it closed in 2010;**
  - **We believe that the Chief Coroner should be appointed to carry out important functions under the Coroners and Justice Act 2009;**
  - **We believe that reforms to the governance of the youth justice system are necessary to ensure that children's rights are protected, whether or not the Youth Justice Board is abolished.**

### **Administrative Justice and Tribunals Council (AJTC)**

**Q1. What are your views on the proposed abolition of the AJTC?**

**Q2. Do you believe that there are any functions of the AJTC that will not be adequately covered following the proposed abolition and suggested future handling of functions as set out above? Please state what these are and your reasons.**

5. We believe that the abolition of the AJTC is logical in the light of the incorporation of the Tribunals Service into HM Courts and Tribunals Service.

### **Her Majesty's Inspectorate of Court Administration (HMICA)**

**Q10. What are your views on the proposed abolition of HMICA?**

**Q11. Do you believe that there are any functions of HMICA that will not be adequately covered following the proposed abolition and suggested future handling of functions as set out above? Please state what these are and your reasons.**

6. Following the abolition of HMICA, it is essential in order to comply with the UK's international legal obligations that the inspection of places of custody and detention within the courts estate is undertaken by HM Inspectorate of Prisons as part of the national preventative mechanism envisaged by, and in accordance with the requirements of, the Optional Protocol to the UN Convention against Torture. This is our primary concern in relation to the abolition of HMICA. We welcome confirmation in para 57 of the consultation that this will be the case, in addition to the proposal in para 56 to enable future joint criminal justice inspections by transfer of functions to the other criminal justice inspectorates. However, we have two other concerns regarding HMICA's abolition.

7. First, it is contrary to the consultation criteria printed on p37 of the consultation paper to be consulting on the closure of HMICA when it is already closed as of December 2010. The criteria state that '[f]ormal consultations should take place at a stage where there is scope to influence the policy outcome'. There is no realistic chance of so doing at this stage in relation to HMICA.

8. Secondly and substantively, we disagree with the notion that since HMTCS is an executive agency of the Ministry of Justice, no external independent oversight of its functions is needed. The independence, integrity and effective functioning of courts and tribunals is essential to guarantee substantive and procedural human rights and it is in our view insufficient that the body responsible for their management should only be accountable to ministers. We note the roles of Parliament (including the Public Accounts Committee) and the National Audit Office (NAO); however, the NAO is responsible for the inspection of public spending rather than of effective practice more generally, and in addition we understand that the NAO is to be abolished.<sup>1</sup> Parliamentary scrutiny cannot provide an effective alternative to a dedicated inspectorate. In these circumstances we oppose (retrospectively) the abolition of HMICA and believe that it should be reinstated.

### **The Office of the Chief Coroner**

- Q14. What are your views on the proposed transfer of functions of the Chief Coroner to the Lord Chief Justice and the Lord Chancellor: in principle, and/or in relation to the particular functions detailed in Annex A?**
- Q15. What are your views on the proposed Ministerial Board and supporting Bereaved Organisations Committee?**
- Q16. Are there any functions of the Chief Coroner not adequately covered by the proposals above, in your opinion? Please explain your reasons.**

9. JUSTICE supported the establishment of the Chief Coroner and believes that a powerful and visible voice is necessary to drive up standards in the inquest system and to ensure that action is taken by government where necessary to avoid future deaths. We believe that important constitutional concerns are raised by the government's attempt to abolish an independent judicial office by means of secondary legislation under the Public Bodies Bill. We understand that the Bill will not now seek to abolish the office of Chief Coroner; however, it will instead transfer many of its functions to the Lord Chancellor and the Lord Chief Justice, and others will remain unfulfilled through failure to bring into force relevant provisions of the Coroners and Justice Act 2009.

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<sup>1</sup> Press release from Department for Communities and Local Government, 13 August 2010.

10. We are particularly concerned that sections 36 and 40 of the Coroners and Justice Act 2009 will not be implemented under the government's plans. The implementation of s36 would have resulted the publication and laying before Parliament of an annual report in which the Chief Coroner could bring matters of importance to the attention of the Lord Chancellor, Parliament and the public. These would include an assessment of the consistency of standards between coroner areas (thus helping to establish consistency and allowing remedial measures to be taken in under-performing areas) and reports from senior coroners of actions necessary to prevent or reduce the risk of future deaths made to people who have the power to take such action (and the required responses to such reports). While senior coroners can continue to make such reports under Sched 5, para 7, and responses continue to be required to them, these will under the government's proposals be sent on to the Lord Chancellor rather than the Chief Coroner and, crucially, will not be made public nor laid before Parliament.
11. In our view publicity is crucial to provide an incentive for action on the part of those who can prevent/reduce the risk of future deaths and it is also essential that Parliament is aware of senior coroners' reports so that legislation can be proposed if it is necessary to prevent/reduce the risk of such deaths. There is a very strong public interest in such information being in the public domain. Indeed, it is a component of the duty to investigate deaths under Article 2 European Convention on Human Rights that there be a sufficient element of public scrutiny of the investigation.<sup>2</sup>
12. We are further concerned at the failure to implement the system of appeals to the Chief Coroner created by s40 Coroners and Justice Act 2009. While, as the consultation states, judicial review will continue to be available, this is a permissive remedy and not available as of right (unlike the s40 appeals). We believe that the creation of an appeal system as of right for interested persons would greatly enhance the integrity and quality of the coronial system and therefore believe that the Chief Coroner should be appointed to hear such appeals, as well as making reports under s36. If savings are required, they can perhaps be made through efficiencies rather than by failing to implement the central element of the structure envisaged by the 2009 Act. There will, of course, be great savings in human and monetary cost if unnecessary deaths are prevented and unnecessary judicial reviews do not take place as a result of the Chief Coroner's appointment.

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<sup>2</sup> See *Isayeva v Russia* (ECtHR, App 57950/00, judgment of 24 February 2005)

## **The Youth Justice Board**

- Q23. What are your views on the proposed abolition of the Youth Justice Board (YJB)?**
- Q24. Do you believe that there are any functions of the YJB that will not be adequately covered following the proposed abolition and suggested future handling of functions as set out above? Please state what these are and your reasons.**
- Q25. How do you believe that the Government can best ensure effective governance of youth justice in the future?**

13. We preface our comments on the future of the YJB by stating our view that the youth justice system in England and Wales is not compliant with the UK's international obligations in relation to children's human rights, including the UN Convention on the Rights of the Child. While many of the reforms necessary to ensure compliance need to take place in primary legislation, others can be accomplished executively and we believe that the YJB's record is mixed in this regard.
14. The YJB is, however, child-specific and this goes some way towards compliance with the requirement that there be a distinct and separate system for children in trouble with the law<sup>3</sup>. However, in order that the youth justice system fulfil its other obligation to treat each child 'in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society',<sup>4</sup> we believe that the body responsible for youth justice within central government should involve officials of those departments responsible for children's health, development and welfare (in particular, the Departments for Education and Health) in addition to the Ministry of Justice. In this context, we regret the demise of the Joint Youth Justice Unit.
15. A further advantage of the YJB is the involvement of the Board itself, which is multi-disciplinary; we believe that the body responsible for youth justice should be advised

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<sup>3</sup> UNCRC, Art 40(3); UN Standard Minimum Rules for the Administration of Juvenile Justice, r2.3.

<sup>4</sup> UNCRC, Art 40(1).

by a range of experts, including academics, practitioners and representatives of the voluntary sector, to ensure evidence-based policy, and that, in accordance with Article 12 UN Convention on the Rights of the Child, the views of children should be sought.

16. The YJB's functions are limited and it may be an advantage of integration into central government that youth justice policy decisions are taken within the same organisation as is responsible for the commissioning of services. This will only be the case, however, if a decision is taken at a high level to realise children's rights within the youth justice system, including by fulfilling the government's obligations to make custody a genuine last resort<sup>5</sup> and to ensure that the small number of children who need to be in custody are in accommodation that is safe, compliant with international standards and that meets their needs.<sup>6</sup>

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<sup>5</sup> UNCRC, Art 37.

<sup>6</sup> ECHR, Arts 2, 3, etc; UNCRC, Art 37(a) and (c); UN Standard Minimum Rules for the Administration of Juvenile Justice, rr26 and 27.